



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TEXAS 75202 - 2733

DEC 28 2015

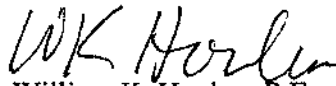
Ms. L'Oreal W. Stepney, P.E.  
Deputy Director  
Office of Water (MC-158)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Dear Ms. Stepney:

Thank you for your December 28, 2015, submittal of the Texas Commission on Environmental Quality's (TCEQ) proposed strategy and procedures in determining reasonable potential (RP) for whole effluent toxicity (WET) testing and the establishment of WET limits in TPDES permits. We appreciate your cooperation, time, and effort while we have worked on addressing this issue. We believe this proposal is a significant step forward and will further ensure protection of aquatic life in Texas waters.

We look forward to working closely with you and your staff in the implementation of this strategy in TPDES permits and ultimately as interim procedures in TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards*. We concur with this approach and will plan to evaluate its effectiveness at the six-year point to determine whether modifications are necessary in light of results. Again, we thank you and your staff for your time and efforts in the development of this interim strategy.

Sincerely yours,

  
William K. Honker, P.E.  
Director  
Water Division

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Jon Niermann, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



6WQ-P  
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## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

December 28, 2015

Mr. William Honker, Director  
U.S. Environmental Protection Agency  
Water Quality Protection Division, MC-6WQ  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

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Dear Mr. Honker:

The Texas Commission on Environmental Quality (TCEQ) appreciates your cooperation in working towards a mutually agreeable approach to assessing reasonable potential (RP) for whole effluent toxicity (WET) and determining when WET limits are required in Texas Pollutant Discharge Elimination System (TPDES) permits. Based upon recent discussions between our agencies, the TCEQ offers the proposed RP determination process described below and requests your confirmation that the proposed process accurately reflects the agreed-upon elements of those discussions.

For permits without WET limits that are being renewed or amended, TCEQ staff will review the last three years of testing history as part of the RP determination. Permits with at least one failure within the three-year evaluation period will be subject to the following outcomes:

- **One or two failures:** A three-year permit will be issued stipulating that upon a test failure, the testing frequency will increase to monthly until three consecutive tests are passed, at which time the permittee will resume quarterly testing. The permit condition will also state that three or more failures within the three-year permit term will constitute a demonstration of RP and will result in a WET limit for the test species demonstrating RP in the subsequently reissued permit. A compliance period up to three years may be included in the subsequently reissued permit in accordance with state and federal regulations. If during the compliance period and prior to the effective date of the WET limit, the permittee identifies and confirms a specific chemical as the source of toxicity, the proposed WET limit will be removed, through a major amendment, and replaced by a chemical-specific limit. After the WET limit goes into effect, it can be removed from the permit through a major amendment after at least three years of compliance with the limit.

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U.S. Environmental Protection Agency  
Water Quality Protection Division, MC-6WQ

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- Three or more failures: RP is demonstrated and a WET limit for the test species demonstrating RP is included in an issued permit. That species will not be eligible for the test frequency reduction. A compliance period up to three years may be included in the permit. After the WET limit goes into effect, it can be removed from the permit through a major amendment after at least three years of compliance with the limit.

Once EPA confirmation is received that the proposed process is an acceptable approach to evaluate RP in TPDES permits, the TCEQ will draft language elaborating the process for inclusion in the upcoming revision of the *Procedures to Implement the Texas Surface Water Quality Standards* and immediately will begin utilizing this approach to move permits forward.

Thank you again for your cooperative efforts to reach agreement on this longstanding issue. We look forward to your response. If you have any questions or concerns, please contact Mr. David Galindo at (512) 239-0951 or by email at [david.galindo@tceq.texas.gov](mailto:david.galindo@tceq.texas.gov)

Sincerely,



L'Oreal W. Stepney, P.E., Deputy Director  
Office of Water  
Texas Commission on Environmental Quality

LWS/MP

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U.S. Environmental Protection Agency  
Water Quality Protection Division, MC-6WQ

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ccs: Ms. Caroline Sweeney, Deputy Director, Office of Legal Services, MC 218  
Mr. David W. Galindo, Division Director, Water Quality Division, MC 145  
Mr. Kelly Q. Holligan, Division Director, Water Quality Planning, MC 203